



March 13, 2020

The Honorable Alex Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue S.W.
Washington, D.C. 20201

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
200 Independence Avenue S.W.
Washington, DC 20201

Dear Secretary Azar and Administrator Verma:

CMS regulations finalized in the 1970s are currently hampering the response to Covid-19 in rural areas. As you know, the CDC is encouraging patients to seek care from their home if they are experiencing Covid-19 symptoms. While fee-for-service offices are able to offer telehealth services to Medicare patients who are located in their homes in emergency areas and bill for them, rural health clinics cannot. This is because rural health clinics (RHCs) can only bill for “visits” defined in 42 CFR § 405.2463 as face-to-face encounters between a RHC patient, and a RHC practitioner. Unfortunately, this definition prevents RHCs from offering telehealth services to Medicare patients because they do not contain a physical face-to-face encounter.

In the backdrop of the Covid-19 pandemic this definition means that RHCs will not be paid by Medicare unless the patient and provider physically meet in the office. Many Medicare patients, both with Covid-19 symptoms and without symptoms, are seeking telehealth services from their home, but RHCs are not able to provide or bill for these services due to this regulation. Furthermore, even though telehealth visits have a video conferencing component, CMS does not consider these to be RHC visits, despite the fact that the RHC practitioner and patient can see each other’s faces.

The Medicare exemptions for telehealth services created by the Coronavirus Preparedness and Response Supplemental Appropriations Act do not extend to rural health clinics because of this definition and thus patients in rural areas served by rural health clinics will not benefit from the ability to have a telehealth visit with their providers from the comfort and safety of their home.

While some individuals have suggested that physicians and providers in rural health clinics can simply bill telehealth services through the physician fee schedule to part B, this is not actually viable option and directly conflicts with the CMS guidance in the Medicare Benefit Policy Manual Chapter 13:

Commingling refers to the sharing of RHC or FQHC space, staff (employed or contracted), supplies, equipment, and/or other resources with an onsite Medicare Part B or Medicaid fee-for-service practice operated by the same RHC or FQHC physician(s) and/or non-physician(s) practitioners. Commingling is prohibited in order to prevent:

- *Duplicate Medicare or Medicaid reimbursement (including situations where the RHC or FQHC is unable to distinguish its actual costs from those that are*

reimbursed on a fee-for-service basis), or

- *Selectively choosing a higher or lower reimbursement rate for the services.*

RHC and FQHC practitioners may not furnish or separately bill for RHC or FQHC covered professional services as a Part B provider in the RHC or FQHC, or in an area outside of the certified RHC or FQHC space such as a treatment room adjacent to the RHC or FQHC, during RHC or FQHC hours of operation.

If an RHC or FQHC practitioner furnishes an RHC or FQHC service at the RHC or FQHC during RHC or FQHC hours, the service must be billed as an RHC or FQHC service. The service cannot be carved out of the cost report and billed to Part B.

Clinicians who work in a RHC do not have the option to simply “flip off” their RHC status and bill the physician fee schedule for a Medicare telehealth visit. This creates a massive commingling liability and violates the spirit of the policy to prevent double billing Medicare.

Thankfully, the statute does not define RHC “visits” in any way, and thus CMS has the full authority to remove the “face-to-face” component of a RHC visit through regulation or guidance. **We urge HHS and CMS to remove the physical, face-to-face requirements from the definition of a RHC visit so that we may provide and bill for telehealth services like the rest of our fee-for-service peers.**

Should you have any questions or concerns please feel free to email or call Nathan Baugh at Nathan.Baugh@narhc.org or (202) 543-0348.

Sincerely,

Bill Finerfrock

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Executive Director
National Association of Rural Health Clinics

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